

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

----- X

SCOTT WILCOX, Individually and as Administrator of  
the Estate of JENNA WILCOX,

**CIVIL ACTION NO.:**  
**13- CV- 01117 RJA/JJM**

Plaintiffs,

-against-

YOKOHAMA TIRE USA,  
YOKOHAMA RUBBER COMPANY, LTD.,  
LES SCHWAB TIRE CENTERS,  
THE AUTO STORE,

Defendants.

----- X

**DECLARATION OF MICHAEL H. BAI, ESQ.**

I, MICHAEL H. BAI, an attorney duly admitted to practice law in the State of New York and before this Court, affirm under the penalties of perjury as follows:

1. I am a member of the law firm of Littleton Joyce Ughetta Park & Kelly LLP, attorneys for Defendant YOKOHAMA TIRE CORPORATION improperly named as Yokohama Tire USA (hereinafter referred to as “YTC” or “Defendants”) in this action. I am fully familiar with all of the facts and issues in this litigation and make this affidavit in support of the Rule 12(b) motion to dismiss for improper venue (Fed. R. Civ. Proc. 12(b)(3)) and failure to state a claim upon which relief can be granted (Fed. R. Civ. Proc. 12(b)(6)) and dismissing the Complaint with all claims therein.

2. On or around November 13, 2013, plaintiff filed the Complaint in this action. A copy of the Complaint is annexed hereto as Exhibit “A”.

3. Plaintiff improperly named Yokohama Tire USA as a defendant. There is no entity named Yokohama Tire USA. *See* Declaration of Thomas Griffing, annexed hereto as Exhibit “C”.

4. YTC requested information from plaintiff’s counsel to identify the tire at issue in this lawsuit. In response to YTC’s request, plaintiff’s counsel responded that the tire was a Proxes 4 Plus tire. A copy of the e-mail from plaintiff’s counsel, Bryan Daniels, Esq., dated January 15, 2014, is annexed hereto as Exhibit “B”.

5. Declarant conducted a search of the Proxes 4 Plus tire and located the web page from Toyo Tire, which is annexed hereto as Exhibit “D”.

6. On January 21, 2014, co-defendant Les Schwab Tire Centers of Washington, Inc. filed its motion to dismiss. *See* Dkt. No. 10.

7. YTC also incorporates by reference the arguments proffered by co-defendant Les Schwab Tire Centers of Washington, Inc., as if fully set forth herein with respect to its arguments in support of its motion to dismiss for improper venue and failure to state a claim upon which relief can be granted. [Dkt. No. 10-1, p. 11-16].

8. In support of YTC’s Rule 12(b) motion to dismiss and for an order pursuant to Fed. R. Civ. Proc. 12, YTC attaches and references the following exhibits:

- A) Plaintiffs’ Complaint, annexed hereto as **Exhibit “A”**;
- B) E-Mail from plaintiff’s counsel, Bryan Daniels, Esq., dated January 15, 2014, annexed hereto as **Exhibit “B”**;
- C) Declaration of Thomas Griffing, annexed hereto as **Exhibit “C”**;
- D) Web page of Proxes 4 Plus tires from Toyo Tires’ website, annexed hereto as **Exhibit “D”**;
- E) *Goldin v. Smith & Nephew, Inc.*, 2013 U.S. Dist. LEXIS 58811 (S.D.N.Y. 2013), annexed hereto as **Exhibit “E”**;

F) *Pinello v. Andreas Stihl Ag & Co. KG*, 2011 U.S. Dist. LEXIS 34460 (N.D.N.Y. 2011), annexed hereto as **Exhibit “F”**; and

G) *Lewis v. Abbott Labs.*, 2009 U.S. Dist. LEXIS 64831 (S.D.N.Y. 2009) , annexed hereto as **Exhibit “G”**.

9. A recitation of the facts and issues involved in this lawsuit is set forth in greater detail in the Memorandum of Law in support. In the interests of brevity, the facts will not be discussed herein.

10. I hereby declare under penalty of perjury under the laws of the United States of America and pursuant to Title 28, U.S. Code, Judiciary and Judicial Procedure § 1746 “Unsworn Declaration Under Penalty of Perjury” that the foregoing is true and correct.

Dated: New York, NY  
January 29, 2014

Respectfully submitted,

LITTLETON JOYCE UGHETTA PARK & KELLY LLP

By: 

Michael H. Bai, Esq.  
Attorneys for Defendant  
Yokohama Tire Corporation  
39 Broadway, 34<sup>th</sup> Floor  
New York, NY 10006  
E-Mail: [michael.bai@littletonjoyce.com](mailto:michael.bai@littletonjoyce.com)  
Tel: (212) 404-5777  
Fax: (212) 232-0088

**CERTIFICATE OF SERVICE**

I certify that on January 29, 2014, that the foregoing document and accompanying exhibits were filed and uploaded to the CM/ECF system which will send a notice of electronic filing to the following:

Hogan Willig, PLLC  
Attorneys for Plaintiff  
2410 North Forest Road, Suite 301  
Amherst, NY 14068  
(716) 636-7600

Woods Oviatt Gilman LLP  
Attorneys for Les Schwab Tire Centers of Washington, Inc.  
700 Crossroads Building  
2 State Street  
Rochester, NY 14614  
(585) 987-2800

By: \_\_\_\_\_

A handwritten signature in blue ink, appearing to read 'M. Bai', is written over a horizontal line.

Michael H. Bai